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Security Council Committee established pursuant to resolution 751 (1992) concerning Somalia

Note verbale dated 20 March 2009 from the Permanent Mission of Australia to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Australia to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 751 (1992) concerning Somalia and has the honour to refer to the provisions of resolution 1844 (2008) adopted on 20 November 2008.

The Permanent Mission of Australia has the honour to provide the Chairman with a report on the steps taken by Australia to implement paragraphs 1 to 7 of resolution 1844 (2009), pursuant to paragraph 25 of that resolution (see annex).

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Annex to the note verbale dated 20 March 2009 from the Permanent Mission of Australia to the United Nations addressed to the Chairman of the Committee

Report of Australia to the Security Council Sanctions Committee for Somalia pursuant to paragraph 25 of Security Council resolution 1844 (2008) of 20 November 2008

1. In paragraph 25 of its resolution 1844 (2008) the Security Council decided that all States report tc the Committee, within 120 days of its adoption on the steps they had taken to implement paragraphs 1 to 7 of the resolution. The present report describes the steps taken and being taken by Australia to implement those paragraphs.

2. Paragraph 1 of resolution 1844 (2008) reads as follows:

> "*Decides* that all Member States shall take the necessary measures to prevent the entry into or transit through their territories of individuals designated by the Committee pursuant to paragraph 8 ..."

3. The entry and transit measures that will apply to individuals who are designated by the Committee established by resolution 751 (1992) will be fully implemented by Australia in accordance with the measures that already apply to individuals designated by other committees established by the Security Council in respect of other sanctions regimes.

4. Australia has a universal system. Non-citizens are required to have a visa that permits their travel to and entry into Australia (with limited exceptions) and non-citizens must hold visas that permit them to remain in Australia.

5. In accordance with the Migration (United Nations Security Council) Regulations 2007, a person who is or becomes the subject of a resolution of the Security Council that requires Australia to prevent that person entering or transiting through Australian territory is unable to be granted a visa or, if a visa has already been granted, subject to limited exceptions, will have his or her visa cancelled. The Minister for Immigration and Citizenship specifies by legislative instrument the relevant resolutions to be covered by the Regulations. Resolution 1844 (2008) has been specified in respect of Somalia.

6. The Department of Immigration and Citizenship maintains a Movement Alert List, which includes the names of non-citizens whose eligibility to be granted a visa or whose continuing eligibility to hold a visa may be in issue. The names of all visa applicants are checked against the Movement Alert List prior to any decision to grant a person a visa to enter Australia. The List is electronically accessible to officers of the Department of Immigration and Citizenship posted to Australia's diplomatic and consular missions worldwide. A complete update of the List is sent electronically, at least daily, to Australia's overseas missions. Additional checks are also undertaken at Australian entry points to ensure that any person listed on the List subsequent to a visa grant is identified.

7. Where there may be a potential match between a visa applicant and an individual listed on the Movement Alert List, further enquiries must be made before a visa can be granted, or, if it has already been granted, to consider whether it can or

must be cancelled. Led by the Department of Immigration and Citizenship, this is a consultative process involving all government bodies, which aims to resolve the List alert by examining available data on both applicants and individuals on the List.

8. Should the Committee designate any persons as being subject to travel or transit restrictions under resolution 1844 (2008), the details of those designated persons will be placed on the Movement Alert List.

9. Paragraph 2 of resolution 1844 (2008) reads as follows:

> "*Decides* that the measures imposed by paragraph 1 above shall not apply:
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> (a) where the Committee determines on a case-by-case basis that such travel is justified on the grounds of humanitarian need, including religious obligation; or
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> (b) where the Committee determines on a case-by-case basis that an exemption would otherwise further the objectives of peace and national reconciliation in Somalia and stability in the region."

10. The Migration (United Nations Security Council Resolutions) Regulations 2007 provide that a visa to travel to or transit through Australia will be permitted where the Minister for Immigration and Citizenship is satisfied that a committee established under a Security Council resolution has:

(a) Determined that the applicant's travel to or transit through Australia is justified; or

(b) authorized the applicant's travel to or transit though Australia.

11. Therefore, Australian law can allow the travel to or transit through Australia of designated persons if the Committee determines, on a case-by-case basis, that the travel or transit is justified on humanitarian grounds or because it would further the objectives of peace and national reconciliation in Somalia and stability in the region.

12. The Migration (United Nations Security Council Resolutions) Regulations 2007 also provide that a visa can be granted to an applicant if the Minister for Immigration and Citizenship is satisfied that the grant of the visa is justified by compelling circumstances including the fulfilment of an international obligation owed by Australia. Determination by the Committee that there are humanitarian or peace and national reconciliation reasons for a designated person to be granted a visa could constitute such compelling circumstances.

13. Paragraph 3 of resolution 1844 (2008) reads as follows:

> "*Decides* that all Member States shall freeze without delay the funds, other financial assets and economic resources which are on their territories, which are owned or controlled, directly or indirectly, by the individuals or entities designated by the Committee ... or by individuals and entities acting on their behalf or at their direction, or by entities owned or controlled by them, as designated by the Committee, and decides further that all Member States shall ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any individuals

or entities within their territories, to or for the benefit of such individuals or entities."

14. The Australian Government is amending the Charter of the United Nations (Sanctions — Somalia) Regulations 2008 (Somalia regulations) in order to fully implement paragraph 3 of resolution 1844 (2008). It is anticipated that these amendments will commence on 14 April 2009.

15. The amendments involve the addition of new provisions to the Somalia Regulations that will prohibit a person who holds a controlled asset from directly or indirectly using or dealing with a controlled asset unless the Minister for Foreign Affairs has authorized that use or dealing. "Controlled asset" will be defined to mean an asset that is owned or controlled, directly or indirectly, by a designated person or entity, or by individuals and entities acting on behalf or at the direction of a designated person or entity, or by entities controlled by a designated person or entity. "Designated person or entity" will be defined as a person or entity designated by the Security Council or by the Committee. The new provisions will also prohibit a person from making assets available, directly or indirectly, to, or for the benefit of, a designated person or entity or to individuals and entities acting on behalf or at the direction of a designated person or entity, or to entities controlled by a designated person or entity. These regulations will apply to the actions of all persons within Australia and to Australians anywhere in the world.

16. The new provisions prohibiting the dealing with controlled assets or making assets available to designated persons or entities will be specified by the Minister for Foreign Affairs as United Nations sanction enforcement laws. Contravention of a United Nations sanction enforcement law, or a condition of a permit granted under a United Nations sanction enforcement law, is an offence under section 27 of the Charter of the United Nations Act 1945. The maximum penalties upon conviction for such an offence are, for individuals, 10 years' imprisonment or a fine the greater of 2,500 penalty units or three times the value of the transaction (if this can be calculated). For bodies corporate, the offence is an offence of strict liability unless it can prove that it took reasonable precautions, and exercised due diligence, to avoid contravening the law. The maximum penalty for bodies corporate upon conviction is a fine the greater of 10,000 penalty units or three times the value of the transaction (if this can be calculated). A penalty unit is equivalent to $110 Australian dollars under section 4AA of the *Crimes Act 1914*.

17. Paragraph 4 of resolution 1844 (2008) reads as follows:

> "*Decides* that the measures imposed by paragraph 3 above do not apply to funds, other financial products or economic resources that have been determined by relevant Member States:
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> (a) to be necessary for basic expenses, including payment of foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges or exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services, or fees or services charges, in accordance with national laws, for routine handling or maintenance of frozen funds, other financial assets and economic resources, after notification by the relevant State to the Committee of its intention to authorize, where appropriate, access to such funds, other financial assets or economic resources, and in the absence of

a negative decision by the Committee within three working days of such notification;

(b) to be necessary for extraordinary expenses, provided that such determination has been notified by the relevant State or Member States to the Committee and has been approved by the Committee; or

(c) to be the subject of judicial, administrative or arbitral lien or judgement, in which case the funds, other financial assets or economic resources may be used to satisfy that lien or judgement provided that the lien or judgement was entered into prior to the date of the present resolution, is not for the benefit of a person or entity designated pursuant to paragraph 3 above, and has been notified by the relevant State or Member States to the Committee."

18. The amendments to the Somalia Regulations that will be introduced to implement paragraph 3 of resolution 1844 (2008) above will enable the Minister for Foreign Affairs, on application, to authorize payments for:

(a) A basic expense dealing in accordance with subparagraph 4 (a) of resolution 1844 (2008);

(b) An extraordinary expense dealing in accordance with subparagraph 4 (b) of resolution 1844 (2008);

(c) A legally required dealing in accordance with subparagraph 4 (c) of resolution 1844 (2008).

The terms are defined in subregulations 5(3), 5(4) and 5(7) of the Charter of the United Nations (Dealing with Assets) Regulations 2008.

19. Paragraph 5 of resolution 1844 (2008) reads as follows:

"*Decides* that Member States may permit the addition to the accounts frozen pursuant to the provisions of paragraph 3 above of interests or other earnings due on those accounts or payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the provisions of this resolution, provided that any such interest, other earnings and payments continue to be subject to these provisions and are frozen."

20. The amendments to the Somalia Regulations that will be introduced to implement paragraph 3 of resolution 1844 (2008) will enable the Minister for Foreign Affairs, on application, to authorize payments for contractual dealings in accordance with paragraph 5 of resolution 1844 (2008). Subregulation 5(5) of the *Charter of the United Nations (Dealing with Assets) Regulations 2008* provides for valid contractual dealings such as the provision of interest due on account holdings, or payments under contracts, agreements or obligations made before the date on which those accounts became accounts holding controlled assets. However, once added to an account that has been frozen in accordance with Australia's obligations under resolution 1844 (2008), paragraph 3, such payment will also be frozen until such time as the individual or entity is no longer listed as a designated person or entity.

21. Paragraph 6 reads as follows:

> "*Reaffirms* the general and complete arms embargo against Somalia imposed by resolution 733 (1992), as elaborated and amended by resolutions 1356 (2001), 1425 (2002), 1725 (2006), 1744 (2007) and 1772 (2007)."

22. The Australian Government implements the general arms embargo against Somalia through the Somalia Regulations. Regulation 8 of the Somalia Regulations prohibits the unauthorized supply, sale or transfer to Somalia of weapons and military equipment which is defined as weapons, ammunition, military vehicles and equipment, spare parts and accessories for military vehicles and equipment, and paramilitary equipment, including bullet-resistant apparel and protective helmets.

23. Under Regulation 9 of the Somalia Regulations, the Minister for Foreign Affairs can authorize the supply to Somalia, in the limited circumstances provided for in previous resolutions of the Security Council, of goods that would otherwise be prohibited. Authorization can be given for the supply, sale or transfer of weapons and military equipment if the supply is:

(a) Solely for the support of, or use by, the mission established by the States of the African Union as authorized by paragraph 4 of resolution 1744 (2007);

(b) A supply of protective clothing that is temporarily exported for the personal use of United Nations personnel, a representative of the media, a humanitarian or development worker or an associated person;

(c) A supply of non-lethal military equipment intended solely for humanitarian or protective use and the supply has been approved by the Committee in advance of the supply occurring;

(d) Solely for the purpose of helping develop security sector institutions consistent with the process set out in paragraphs 1, 2 and 3 of resolution 1744 (2007). In such cases, the Minister for Foreign Affairs must notify the Committee in advance of the intention to grant a permit and allow five working days to elapse before granting the permit during which time the Committee must not have advised against granting the permit.

24. Regulation 8 has been specified by the Minister for Foreign Affairs as a United Nations sanction enforcement law. Contravention of a United Nations sanction enforcement law, or a condition of a permit granted under a United Nations sanction enforcement law (such as a permit granted under Regulation 9) is an offence under section 27 of the Charter of the United Nations Act 1945. The maximum penalties upon conviction for such an offence are, for individuals, 10 years' imprisonment or a fine the greater of 2,500 penalty units or three times the value of the transaction (if this can be calculated). For bodies corporate, the offence is an offence of strict liability unless the body corporate can prove that it took reasonable precautions and exercised due diligence to avoid contravening the law. The maximum penalty for bodies corporate upon conviction is a fine the greater of 10,000 penalty units or three times the value of the transaction (if this can be calculated). A penalty unit is equivalent to $110 Australian dollars under section 4AA of the Crimes Act 1914.

25. Paragraph 7 of resolution 1844 (2008) reads as follows:

> "*Decides* that all Member States shall take the necessary measures to prevent the direct or indirect supply, sale or transfer of weapons and military

equipment and the direct or indirect supply of technical assistance or training, financial and other assistance including investment, brokering or other financial services, related to military activities or to the supply, sale, transfer, manufacture, maintenance or use of weapons and military equipment, to the individuals or entities designated by the Committee pursuant to paragraph 8 below."

26. Regulation 10 of the Somalia Regulations currently prohibits the direct or indirect provision to Somalia of financing for the acquisition or delivery of weapons and military equipment as well as the provision of technical advice or financial or other assistance related to military activities.

27. The amendments to the Somalia Regulations, which are expected to commence on 14 April 2009, will prohibit the direct or indirect supply, sale or transfer of weapons and military equipment to persons or entities designated by the Security Council or the Committee. The amendments will also prohibit the direct or indirect provision to a designated person or entity of technical assistance or training, financing and other assistance including investment, brokering or other financial services related to military activities or the supply, sale, transfer, manufacture or use of weapons and military equipment.